

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

APPLICANT:	OTTOFY, GLYN	DOCKET NO.:	4332P2728
SERIAL NO.:	10/705,310	EXAMINER:	JONES, SCOTT E.
FILED:	11/10/2003	ART UNIT:	3714
TITLE:	SYSTEM AND METHOD FOR PLAYING A TEAM GAMING TOURNAMENT		

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September 15, 2008

I hereby certify that on the 15<sup>th</sup> day of September, 2008, this correspondence is being filed electronically on EFS-Web.

/Karen J. Sepura/

Karen J. Sepura

**APPELLANT'S REPLY BRIEF**

Dear Sir:

This brief is submitted in support of the Appeal in the above-identified patent application and in reply to the Examiner's Answer mailed on July 23, 2008.

### **STATUS OF CLAIMS**

The claims involved in this patent application, including the status of each of those claims, are as follows:

Claims 1-5: rejected.

Claim 6: cancelled.

Claims 7-16: rejected.

Claim 17: cancelled.

Claims 18-20: rejected.

The claims on appeal are as follows: Claims 1-5, 7-16 and 18-20.

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether Claims 1, 4-5, 7, 10-12, 15-16 and 18 are unpatentable under 35 U.S.C. § 102(b) over U.S. Patent No. 6,142,872 to Walker?
  
2. Whether Claims 8-9 and 19-20 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,142,872 to Walker?
  
3. Whether Claims 2-3 and 13-14 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,142,872 to Walker in view of U.S. Patent No. 5,755,621 to Marks?

## **REPLY TO EXAMINER'S RESPONSE TO ARGUMENT**

1. The Rejection of Claims 1, 4-5, 7, 10-12, 15-16 and 18 as Unpatentable Under 35 U.S.C. § 102(b) Over U.S. Patent No. 6,142,872 to Walker et al.

Appellant's independent Claims 1, 11 and 12 are not anticipated by Walker. As Appellant has previously noted, Walker is directed to the team play of slot machines, where players play against those slot machines. Amended Appeal Brief, p. 10. Without citing at all to Walker in support of such an assertion, the Examiner asserts in a conclusory fashion that this is not correct. Examiner's Answer, ¶ 6. The Examiner contends that Appellant's references to Walker consist of "players playing on a [*sic*] teams where teams compete against other teams." *Id.* Appellant respectfully submits that even if this is the case, unlike in Appellant's claimed invention, Walker's players still are playing *against machines*. For example, a game result is dependent upon what occurs with a spin or spins of the slot machine. Thus, Walker's invention requires those machines – the team players use the machines and play against the machines. *See, e.g.,* Walker col. 1, line 6-9 (noting that "the present invention relates generally to electronic gaming devices, such as slot machines, and more particularly, to a system for permitting team play of such electronic gaming devices"); *id.* at col. 3, line 67 – col. 4, line 2 ("the slot server 200 permits team-play of slot machines by a plurality of slot machine players using the slot machines"); and *id.* at col. 8, lines 40-42 ("the per-spin process 1500 and the per-session process 1700 are executed by the slot machines 300-303 being utilized by team players").

Further, Walker teaches the use of programmable gaming devices and emphasizes the electronic nature of the slot machines: "As used herein, the term 'slot machine' refers to any programmable gaming device generating a random or pseudo-random event in which one or more players can wager on the outcome of the event. Examples of slot machines include

traditional slot machines, video poker, video bingo, video keno and video blackjack devices.” Walker col. 4, lines 20-25. Walker fails to teach slot machine play that does not involve programmable gaming devices. Indeed, in the Background of the Invention, Walker makes a point of distinguishing “table games” from “slot machines.” See col. 1, lines 24-27. Thus, to the extent that Walker concerns any form of poker, as Appellant has previously noted, Walker is directed only to video poker machines, not live poker. Amended Appeal Brief, p. 11. Indeed, the Examiner seems to acknowledge this, particularly in referring to Walker’s Video Poker Embodiment. Examiner’s Answer ¶ 8. Walker’s Video Poker Embodiment still teaches players playing *against machines*. See, e.g., Walker col. 16, lines 39-44 (“the present invention may be applied to video poker *machines*, as well as to the illustrative slot machines 300-303. In a video poker implementation, the game results of each player on a given team are combined, and the result providing the highest payout, is provided to each of the team members.”) (emphasis added).

The Examiner has attempted to blur the distinction between Appellant’s live poker game with what the Examiner has termed “live (current) play” in Walker. Examiner’s Answer ¶ 7. To the extent that there is “live (current) play” in Walker, this essentially involves players playing in real time, but such players are still playing *against machines*. As discussed above, Walker requires this. Conversely, Appellant’s live poker game, as claimed, involves players playing against one another, as opposed to playing against machines. See, e.g., Claim 1. Thus, Walker does not teach the limitations of the gaming tournament being a *live poker tournament* in which the players compete *against one another* as Appellant’s independent Claims 1, 11 and 12 recite.

Appellant has properly noted the aspect of players having the ability to bluff or deceive other players in live poker – bluffing is an aspect of poker that is essentially inherent and indeed

is a notoriously well-known element of a live poker game. *See* Declaration Under 37 CFR § 1.132 of Richard Fitzhugh (“Fitzhugh Declaration”), filed on December 18, 2006 and included in the evidence appendix to Appellant’s Amended Appeal Brief (noting that “[t]he explosion in popularity that has occurred with live poker is in large part due to the ability for one player to ‘bluff’ another player. A first player’s ability to deceive an opponent into believing that the first player holds cards having a value contrary to their actual value is the critical dramatic element to live poker that is missing from video or slot poker.”). The Examiner attempts to dismiss the Fitzhugh Declaration, by asserting for the first time – and in a conclusory fashion – that it “amounts to an opinion; the Declaration is not commiserate [*sic*] with the scope of the claims; and/or is unsupported by the originally filed specification.” Examiner’s Answer, ¶ 9. This is insufficient. *See* MPEP § 716.01 (“Where the evidence is insufficient to overcome the rejection, the examiner must specifically explain why the evidence is insufficient. General statements such as ‘the declaration lacks technical validity’ or ‘the evidence is not commensurate with the scope of the claims’ without an explanation supporting such findings are insufficient.”). Appellant respectfully submits that the Fitzhugh Declaration is competent with respect to the feature of “bluffing” and properly supports Appellant’s arguments.

Claims 4-5, 7 and 10 depend upon Claim 1, and Claims 15-16 and 18, depend upon Claim 11. For the same reasons that independent Claims 1 and 11 are not anticipated by Walker, Claims 4-5, 7, 10 15-16 and 18 also not anticipated by Walker.

Accordingly, Appellant respectfully submits that the rejection of Claims 1, 4-5, 7, 10-12, 15-16 and 18 was in error.

2. The Rejection of Claims 8-9 and 19-20 as Unpatentable Under 35 U.S.C. § 103(a) Over U.S. Patent No. 6,142,872 to Walker

Appellant incorporates herein by reference the arguments in the foregoing paragraphs. Claims 8-9 and 19-20 depend, respectively, upon Claims 1 and 11. For the same reasons that Claims 1 and 11 are not anticipated by Walker, as discussed above, Claims 8-9 and 19-20 are not obvious under Walker.

In addition, the Examiner has already acknowledged that Walker “does not disclose limiting a number of said plurality of players to enter said gaming tournament to a predetermined number, requiring each said plurality of teams to comprise a predetermined minimum number of players, and limiting each said plurality of teams to a predetermined maximum number of players, in order to restrict access to a maximum number of players.” Final Office Action, p. 4. There simply is no suggestion in Walker that it could be modified to have gaming tournaments with, for example, a maximum of 100 players with teams of no less than three players and no more than five players. Considering Claims 8-9 and 19-20 as a whole, including the base claims from which they depend, these claims are not obvious under Walker.

Accordingly, Appellant respectfully submits that the rejection of Claims 8-9 and 19-20 was in error.

3. The Rejection of Claims 2-3 and 13-14 as Unpatentable Under 35 U.S.C. § 103(a) Over U.S. Patent No. 6,142,872 to Walker in View of U.S. Patent No. 5,755,621 to Marks

Appellant incorporates herein by reference the arguments in the foregoing paragraphs. Claims 2-3 depend, directly or indirectly, from Claim 1. Claims 13-14 depend, directly or indirectly, from Claim 12.

In addition, Appellant maintains that Marks does not suggest calculating finishes for individual players based on the play of their teammates. The Examiner has disagreed with this “for the reasons provided in the substantive art rejection.” Examiner’s Answer, ¶ 13. In the substantive art rejection involving the Examiner’s discussion of Marks, the Examiner repeatedly made references to teams, noting that:

Marks teaches said finish number being equivalent to an order that each said plurality of players is eliminated from said tournament relative to other said plurality of players, assigning a finish equalization number to each said *plurality of teams*, said finish equalization number being equivalent to a maximum number of players allowed per each said *plurality of teams* divided by an actual number of players per each said *plurality of teams*..., assigning an equalization number to each said plurality of players, said equalization number being equivalent to a multiplication of said finish number of each said plurality of players of each said *plurality of teams* wherein a higher number corresponds to a higher *team placement finish*, and assigning said finish number only to each said plurality of players finishing in a predetermined number of places in said gaming tournament....

Final Office Action, p. 5 (emphasis added). However, this language is neither shown, nor stated, nor reasonably suggested in Marks. In Marks, the rankings are assigned based on how individual players have performed vis-à-vis other individual players. *See* Marks col. 20, lines 15-22; *see also id.* at col. 18, lines 33-41. There is no discussion in Marks about team members or teammates. Conversely, in Appellant’s invention, as claimed in dependent Claims 2-3 and 13-14, a player’s score is calculated based on how a player’s teammates have performed. Combining Walker with Marks in the manner suggested by the Examiner does not reach Appellant’s Claims 2-3 and 13-14.

Accordingly, Appellant respectfully submits that the rejection of Claims 2-3 and 13-14 was in error.

## **CONCLUSION**

For the reasons stated above, as well as those articulated in Appellant's Amended Appeal Brief, Appellant respectfully submits that the final rejection of Claims 1-5, 7-16 and 18-20 was in error, and that these claims should be allowed. Accordingly, Appellant respectfully urges the Board to reverse the Examiner's final rejection of these claims.

No additional fee or extension of time is believed to be required; however, in the event that an additional fee or extension of time is required, please charge that fee or extension of time requested to our Deposit Account No. 23-0830.

Respectfully submitted,

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